

GARVESTER BRACKEN,)
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 Plaintiff,)
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 v.) No. 4:16-CV-01802-NCC
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 STATE OF MISSOURI, et al.,)
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 Defendants.)
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This matter is before the Court on plaintiff's pro se complaint. The complaint is defective because it has not been drafted on a Court-provided form, *see* Local Rule 2.06(A), and because plaintiff has neither paid the filing fee nor submitted a motion to proceed in forma pauperis along with a prison account statement, *see* 28 U.S.C. § 1915(a). Additionally, plaintiff will be required to amend his complaint in order to state a claim for relief against defendants.

Plaintiff brings this action pursuant to 42 U.S.C. § 1983. He is currently incarcerated at South Central Correctional Center (“SCCC”) in Licking, Missouri. He has filed a complaint against defendants the State of Missouri; Jennifer Joyce (Prosecutor); Rachel Scharzlose (Asst. Prosecutor); and Bobby Bailey (Former Asst. Prosecutor). Plaintiff asserts that each of these defendants violated his rights by initiating and commencing a felony prosecution against him in violation of the Fourth Amendment.

The Court is required to conduct a pre-service review of an action filed by a prisoner

seeking to proceed in forma pauperis. *See* 28 U.S.C. § 1915. If any part of the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted, the Court is required to dismiss the frivolous portions of the lawsuit prior to ordering service of process on the complaint. 28 U.S.C. § 1915(e).

As noted above, plaintiff, a prisoner, has failed to submit a motion to proceed in forma pauperis or an accompanying prison account statement, required by 28 U.S.C. § 1915(a). Accordingly, the Court cannot grant plaintiff leave to proceed in forma pauperis at this time.

Additionally, the way plaintiff's complaint is currently drafted fails to state a claim upon which relief may be granted. The State of Missouri is absolutely immune from liability under 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 63 (1989). And where "[a] prosecutor is acting as advocate for the state in a criminal prosecution, [] the prosecutor is entitled to absolute immunity." *Brodnicki v. City of Omaha*, 75 F.3d 1261, 1266 (8th Cir. 1996). Thus, as plaintiff's complaint is currently pled, it is subject to dismissal.

However, because plaintiff is proceeding pro se, the Court will allow plaintiff to file an amended complaint on a Court form. Plaintiff shall have thirty days from the date of this Order to file an amended complaint in accordance with the specific instructions set forth herein.

All claims in an action must be included in one, centralized complaint form. **Plaintiff is warned that the filing of an amended complaint replaces the original complaint and all previously-filed pleadings, and so he must include each and every one of the claims he wishes to pursue in the amended complaint.** *See, e.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). **Any claims from the original complaint, supplements, and/or pleadings that are not included in the amended complaint will be deemed abandoned and will not be considered.** *Id.* **If plaintiff wishes to sue defendants in**

their individual capacities, plaintiff must specifically say so in the amended complaint. If plaintiff fails to sue defendants in their individual capacities, this action may be subject to dismissal. All of plaintiff's claims should be clearly set forth in the "Statement of Claim." If plaintiff fails to file an amended complaint on a Court form within thirty days in accordance with the Court's instructions, the Court will dismiss this action without prejudice and without further notice.

Accordingly,

IT IS HEREBY ORDERED that the Clerk shall mail to plaintiff a copy of the Court's form Prisoner Civil Rights Complaint.

IT IS FURTHER ORDERED that the Clerk shall mail to plaintiff a copy of the Court's Motion to Proceed in Forma Pauperis - Prisoner Cases.

IT IS FURTHER ORDERED that plaintiff shall file an amended complaint on the Court-provided form within (30) days of the date of this Order.

IT IS FURTHER ORDERED that plaintiff shall either pay the \$400 filing fee or submit a motion to proceed in forma pauperis within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that if plaintiff submits a motion to proceed in forma pauperis, he must also submit a certified copy of his prison account statement for the six month period immediately preceding the filing of his complaint.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, the court will dismiss this action without prejudice. If the case is dismissed, the dismissal will not constitute a "strike" under 28 U.S.C. § 1915(g).

Dated this 22nd day of November, 2016.

\s\ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE